

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VALERIO DELLA PORTA and
MEDIATRAY, L.L.C.,

Plaintiffs,

v.

HORSECO, INC.,
TOM LUDT,
JAMIE LAMONICA, and
KEVIN LISKE,

Defendants.

Case No. 2:19-cv-13733

Magistrate Judge Anthony P. Patti

**ORDER GRANTING IN PART PLAINTIFFS' MOTION TO EXTEND
DISCOVERY (ECF NO. 33), DENYING AS MOOT DEFENDANTS'
MOTION TO STRIKE PLAINTIFFS' EXPERT DISCLOSURE (ECF NO.
31), and CANCELLING HEARING NOTICED FOR AUGUST 26, 2021
(ECF NOS. 34, 35)**

Plaintiffs initiated this breach of contract case in December 2019. They amended their pleading in March 2020. (ECF No. 4.) When Defendants filed their answer in December 2020, Defendant Horseco, Inc. included a counterclaim. (ECF No. 17). Meanwhile, on December 9, 2020, the Court denied Defendants' motion to dismiss. (ECF No. 15.)

On January 22, 2021, the Court entered a civil case management and scheduling order, which, *inter alia*, set the expert disclosure deadline for May 24, 2021. (ECF No. 21.) Shortly thereafter, the parties consented to my jurisdiction

(ECF Nos. 22, 23), and I promptly noticed a video status conference (ECF Nos. 29, 30).

A video status conference, which turned into a motion hearing, was held on August 4, 2021, at which attorneys Daniel R. Shemke, Derek J. Kinkous, and John Roach appeared. (ECF Nos. 29, 30.) The Court entertained oral argument on the pending motions (ECF Nos. 31, 33), after which the Court issued its ruling from the bench.

For the reasons stated on the record, all of which are incorporated by reference as though fully restated herein, Plaintiffs' July 16, 2021 motion to extend discovery (ECF No. 33) is **GRANTED IN PART** and **DENIED IN PART** as follows:

- Plaintiffs have demonstrated that the Fed. R. Civ. P. 16(b)(4) factors set forth in Defendants' Opposition to Plaintiffs' Motion to Extend Discovery (ECF No. 37, PageID.623) weigh in favor of granting the motion.
- In accordance with Fed. R. Civ. P. 1, the deadline for expert disclosures is extended – mutually – to the Fed. R. Civ. P. 26(a)(2) default rule, as Plaintiffs' expert's opinion is expected to address damages and not liability.
- As for any forthcoming motion for summary judgment by the defense, Plaintiffs may not respond with an expert's affidavit unless Defendants' dispositive motion raises the issue of the reasonableness of Plaintiff's claimed service fees– either as to Plaintiffs' time or Plaintiffs' value of time spent.
- While there will be no further extension of fact discovery, Plaintiffs may issue a document subpoena to Ample no later

than **Wednesday, August 25, 2021**; Plaintiffs *may not* depose Ample.

- While the parties may discuss settlement at any point, mediation must occur within 60 days of a ruling on summary judgment that is at least partially favorable to the Plaintiffs.
- Dates for the Proposed Final Pretrial Order, the Final Pretrial Conference, and the Jury Trial will not be set until after the Court rules upon any forthcoming motions for summary judgment.

Also, Defendants' motion to strike Plaintiffs' expert disclosure (ECF No. 31) is **DENIED AS MOOT**. Finally, the hearing noticed for August 26, 2021 (ECF Nos. 34, 35) is hereby **CANCELLED**.

IT IS SO ORDERED.

Dated: August 4, 2021



Anthony P. Patti
U.S. MAGISTRATE JUDGE